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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD BROADCASTING)	File No. BRCT-910603KX
COMPANY)	
)	
For Renewal of License)	
Station WMAR-TV)	
Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	

To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S OPPOSITION TO
PETITION FOR CERTIFICATION

1. On April 8, 1993, Scripps Howard Broadcasting Company (Scripps Howard) filed a petition for certification to the Commission of two questions raised in its attached Application for Review.¹ The Mass Media Bureau opposes Scripps Howard's petition for certification.

2. Scripps Howard contends that certification, pursuant to

¹ The two questions are; (1) whether the Commission's staff erred in holding that the inconsistent application rule does not prohibit the filing of the Four Jacks application for a new station while its renewal application was pending; and (2) whether the Commission's staff erred in failing to dismiss Four Jack's application for new facilities in light of the inconsistent application rule.

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Section 1.106(a)(2) of the Commission's Rules is warranted because a substantial question exists as to whether the need for a hearing exists.² Specifically, Scripps Howard alleges that applicants that seek to operate on a new channel while at the same time pursuing a renewal application for their existing authorization in the same community, are in violation of the Commission's inconsistent application rule. See Section 73.3518 of the Commission's Rules.³ In support of this contention, Scripps Howard cites, inter alia, Big Wyoming Broadcasting Corp., 2 FCC 2d 3493 (1987) and Southern Keswick, Inc., 34 FCC 2d 624 (1972).

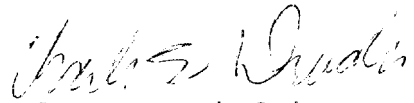
3. In Southern Keswick, an applicant proposed a change in frequency to a new FM channel and a simultaneous assignment of license of its existing channel in the same market. The Commission found the two applications to be mutually inconsistent. The Commission, however, in WPOW, Inc., 66 RR 2d 81 (1986), modified its holding in Southern Keswick and redefined mutually inconsistent applications in the context of existing


applicants seeking to upgrade their facilities. Where the

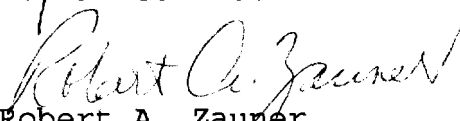
Where licensees seek to prosecute both new station and assignment applications in the same market, the test of mutual inconsistency will be governed exclusively by technical criteria. If the assigned station and the proposed new station can technically co-exist, both operating simultaneously in compliance with all relevant protection requirements, then the applications will not be deemed mutually inconsistent.

application for an existing station in the same market.
Consequently, the petition of Scripps Howard for certification
should be denied.

Respectfully submitted,
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April 19, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 19th day of April 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Petition for Certification"** to:

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